

Federal Communications Commission

FCC 97-402

Public Access to 911 (Alliance)⁸ and a Consensus Agreement filed by the Cellular Telecommunications Industry Association (CTIA) and three national public safety organizations – the Association of Public-Safety Communications Officials International, Inc. (APCO), the National Emergency Number Association (NENA), and the National Association of State Nine One One Administrators (NASNA).⁹

8. In adopting the *E911 First Report and Order*, the Commission recognized the importance of improving the quality and reliability of 911 services available to wireless callers. Although 911 was originally developed for wireline telephone users, the number of wireless 911 calls is growing rapidly, paralleling the dramatic increase in wireless telephone subscribers in the United States, currently more than 50 million.¹⁰ According to CTIA, more than 21 million emergency wireless calls were placed in 1996 in the United States.¹¹ This amounts to more than 59,000 wireless 911 calls each day. Unlike wireline E911 systems, which allow automatic number identification and automatic location identification of wireline 911 calls, however, the phone number and the location of the caller cannot be displayed at the Public Safety Answering Point (PSAP) for wireless calls and many wireless 911 callers have difficulty describing their exact location to emergency assistance providers.

9. In the *E911 First Report and Order*, therefore, the Commission established the following requirements for wireless carriers, including cellular, broadband personal Communications Service (PCS), and certain SMRs:

⁸ On October 27, 1995, Alliance filed a Petition for Rulemaking requesting that 911 access be provided to any cellular phone, regardless of whether it is listed as a cellular carrier's subscriber, and that mobile handsets be equipped to select and use the channel with the strongest cellular signal whenever a 911 call is placed. Eight comments and one reply comment were filed. See *E911 First Report and Order*. 11 FCC Rcd at 18687 (para. 20).

⁹ On February 23, 1996, the Commission sought comment regarding the Consensus Agreement, and 17 comments and 14 reply comments were filed. *Id.* at 18688 (para. 22).

¹⁰ CTIA announced that the number of wireless telephone subscribers would reach 50 million for the first time during the week of July 27 to August 2, 1997. "July 17 – August 2: U.S. will reach 50 million wireless phone subscribers," CTIA News Release, July 21, 1997. This represents a 19 percent penetration rate; total United State population is 260 million. See also Electronic Buyers News, June 23, 1997, at I; Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Second Report, FCC 97-75, 12 FCC Red 11267 (1997).

¹¹ See "Wireless Phones Used for over 59,000 Emergency Calls Every Day," CTIA News Release, May 20, 1997.

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- Within 12 months after the effective date of E911 rules (*i.e.*, by October 1, 1997), carriers must process and transmit to an appropriate PSAP all 911 calls from wireless handsets which transmit a code identification, without user validation.¹²
- By this date, carriers must also process and transmit calls that do not transmit a code identification to any appropriate PSAP which has formally instructed the carrier that it desires to receive such calls from the carrier.
- By this date, carriers must also be capable of transmitting 911 calls made by persons with disabilities, *e.g.*, through use of TTY equipment.

Enhanced 911 Capabilities**Phase I:**

- Within 12 months of the effective date of the rules (*i.e.*, by October 1, 1997), carriers must have initiated actions necessary to relay a caller's Automatic Number Identification (ANI) and the location of the cell site receiving a 911 call. These capabilities are designed to allow the PSAP to call back the phone placing the 911 call if disconnected, and help identify the location of the caller.
- Within 18 months (*i.e.*, by April 1, 1998) the carriers must have completed these actions.

Phase II:

- Not later than five years after the effective date of the rules (*i.e.*, by October 1, 2001), carriers are required to have the capability to identify the latitude and longitude of the mobile units making 911 calls within a radius of no more than 125 meters, using Root Mean Square calculations (which roughly equate to success rates of approximately 67 percent).

Phase I and Phase II E911 Conditions:

- The E911 requirements apply only if:

¹² The definition of the terms "code identification" and "user validation" are discussed in Section III.A., *infra*.

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- (1) the carrier receives a request for such services from a PSAP capable of receiving and using the service, and
- (2) a mechanism for the recovery of costs relating to the provision of such services is in place.

100. While the Interstate Commerce Commission (ICC) has issued rulings affecting the liability of carriers subject to their rules and requirements, those actions were taken pursuant to specific language that gives the ICC authority to modify the imposition of liability.²¹⁰ No such statutory provision is applicable here. In addition, before we would consider taking any action to preempt state tort law, we would need to demonstrate that our rule with respect to limitations on carrier liability is essential to achieving the goals of the Communications Act.²¹¹ We note that the Court of Appeals for the D.C. Circuit has struck down, as infringing upon the jurisdiction of state courts, a Federal Energy Regulatory Commission ruling that conditioned the granting of licenses for dams on a rule of strict liability for property damage caused by seismically induced dam failure.²¹² The court noted that FERC failed to show that the action was essential to achieving the goals of the Federal Power Act. In our view, displacing the jurisdiction of state courts over tort suits for negligence in installation, performance, provision, or maintenance of E911 systems is not necessary to the inauguration of E911 service. We therefore are unable to find that general exemption from liability is essential to achieving the goals of the Communications Act.

101. Aside from the requests for general exemption from liability, several carriers request specific exemptions. BellSouth expresses concern regarding liability for violating per line blocking requirements. GTE contends that it cannot provide 100 percent accurate location information. We find that BellSouth has not provided sufficient evidence to show that it is unable to permit 911 location information to be transmitted without transmitting location information for other calls. Therefore, there is an inadequate record to determine whether exemption from liability for violating per line blocking requirements is essential to the inauguration of E911. Consequently, we shall not grant BellSouth's request for exemption, but shall decide such requests on a case-by-case basis. With respect to GTE's contention that we do not require 100 percent accuracy, a state court finding of liability would not thwart any Commission goal. We do not require 100 percent accuracy, but we expect that as technology allows for greater accuracy, wireless providers will upgrade their capabilities accordingly.²¹³

5. Preemption

a. Background and Pleadings

100. In the *Notice*, we stated that we could preempt state regulation that affects interstate service when it is not possible to separate the interstate and intrastate

²¹⁰ *Southern Railway Co. v. United States*, 194 F. Supp. 633 (E.D. Va. 1961).

²¹¹ *See South Carolina Pub. Serv. Authority V. FERC*, 850 F. 2d 788 (D.C. Cir. 1988).

²¹² *Id.* at 792-95.

²¹³ We explore this issue in greater detail in the Further Notice we are adopting today. *See* paras. 135-142, *infra*.

components of the service or when it thwarts or impedes a federal policy. We asked for comment with respect to whether any conflicts exist between our proposed rules and state regulations. Commenters opposing preemption were asked to provide alternatives to ensure that Federal, state, and local requirements do not thwart the nationwide goal of achieving compatibility with enhanced 911 systems.²¹⁴

101. Most commenters supported the need for preemption of state standards to ensure nationwide deployment of consistent technology.²¹⁵ Springwich Cellular, for example, claimed that it can provide the location of the cell site in Connecticut but not in Massachusetts, due to state restrictions in its interconnection arrangements with the LECs.²¹⁶ Two state agencies oppose Federal preemption on the grounds that state and local funds remain the sole support of these systems.²¹⁷

a. Discussion

104. We begin this discussion by emphasizing our understanding of states' interests in telecommunications and public safety matters, including E911 operations. As we stated in the *Notice*, however, it is well established that this Commission may preempt state regulation when (1) the matter to be regulated has inseverable interstate and intrastate aspects; and (2) preemption is necessary to protect a valid Federal regulatory objective.²¹⁸ A primary objective in this proceeding is to fulfill our statutory mandate of "promoting safety of life and property"²¹⁹ through wireless communications by facilitating the deployment of E911 capabilities to the maximum reasonable extent throughout the Nation. In that regard, we agree with those commenters, including state and local public safety organizations, who argue that Federal preemption of intrastate E911 operations, including: (1) ubiquitous E911 operational compatibility; (2) the avoidance of state-by-state technical and operational requirements that would burden equipment manufacturers and carriers; and (3) the averting of confusion by end users, especially roamers, who are attempting to contact emergency service providers.²²⁰

105. Moreover, those few state agencies who oppose preemption do not provide any reasonable alternative means to achieve these objectives other than by

²¹⁴ *Notice*, 9 FCC Red at 6181 (para. 59).

²¹⁵ *See, e.g.*, PCIA Reply Comments at 13; Nextel Reply Comments at 7; ICSAR Reply Comments at 3-4.

²¹⁶ Springwich Comments at 7.

²¹⁷ TX-ACSEC Comments at 13; Oregon Comments at 6.

²¹⁸ *Notice*, 9 FCC Red at 6181 (para. 59). *See* Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986); Illinois Bell Tel. co. v. FCC, 833 F. 2d 104 (D.C. Cir. 1989); California v. FCC, 905 F. 2d 1217 (9th Cir. 1990); Texas Public Utility Comm'n v. FCC, 886 F. 2d 1325 (D.C. Cir. 1989); North Carolina Utilities Comm'n v. FCC, 552 F. 2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977), North Carolina Utilities Comm'n v. FCC, 537 F. 2d 787 (4th Cir.), cert. denied, 429 U.S. 1027 (1976).

²¹⁹ 47 U.S.C. § 151.

²²⁰ *See, e.g.*, CTIA Reply Comments at 13; Nextel Reply Comments at 7; ICSAR Reply Comments at 7.

preemption. Against this background, we conclude that state actions that are incompatible with the policies and rules adopted in this Order are subject to preemption. Since we have not been presented with evidence that specific state regulations are, in fact, incompatible with national E911 goals, we shall not preempt any state regulations at this time. Instead, we shall examine the need for specific preemption in the future on a case-by-case basis, relying on the guidelines expressed in this Order.

good faith as an implementation issue which need not delay adoption of the general rule.¹⁵⁸ As stated above, we have found E911 service to be in the public interest. We agree that there may be exceptional circumstances where deployment of E911 may not be technically or economically feasible within the five-year general deadline. We believe that these cases can be dealt with through individual waivers. In cases where the cost recovery mechanisms for E911 service uniquely disadvantage a particular carrier, we will also consider waiver requests. We agree with the parties to the Consensus Agreement that this need not delay adoption of the general rule and encourage their efforts to develop recommended approaches to resolving these implementation issues as they are more precisely identified. Moreover, to the extent that, in any rural area, no PSAP Administrator has informed the carrier that the PSAP is capable of receiving and utilizing the data elements associated with the service, the rural carrier will not be obligated to provide E911.

3. Cost Recovery

a. Pleadings and Consensus Agreement

85. Although the issue of cost recovery was not directly addressed in the *Notice*, many commenters in their initial and reply comments urged the Commission to address it in relation to the implementation of E911 compatibility.¹⁵⁹ Several commenters representing the wireless carriers argued that wireless service providers will incur substantial costs in implementing E911 services and expressed concern about their ability to recover their costs.¹⁶⁰ Many commenters emphasized the need to develop a funding mechanism to recover the costs of implementing wireless E911 technology, arguing that such technology should be funded the same way that wireless deployment of 911 service has been funded – through tax revenues, supplemented with subscriber surcharges.¹⁶¹ Noting that E911 compatibility requirements will be a government mandate, some parties suggested that the Commission should take the lead in addressing cost

¹⁵⁸ *Id.* at 3.

¹⁵⁹ See, e.g., AT&T Comments at 42; PCIA Comments at 28; GTE Comments at 31-32; BellSouth Comments at 20-21; Bell Atlantic Comments at 12; Nextel Comments at 7; Pacific Bell Comments at 3; PCIA Comments at 28; APC Comments at 3-4; Ameritech Comments at 7; Nortel Comments at 62; RCA Comments at 9; US West Comments at 23-25.

¹⁶⁰ AT&T Comments at 42-43; PCIA Comments at 28; BellSouth Comments at 20-21; Nextel Comments at 7.

¹⁶¹ E.G., AT&T Comments at 42; BellSouth Comments at 20-21.

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recovery.¹⁶² RCA, for example, was concerned about imposition of a federal mandate for the provision of E911 services in rural areas, and suggested that the Commission should consider an appropriate cost recovery mechanism for mobile service providers.¹⁶³ Some commenters further requested the deferral of wireless E911 compatibility until an equitable cost recovery mechanism is developed.¹⁶⁴

86. While wireless carriers requested the Commission to provide a means for recovering their costs, public safety groups and other commenters did not address the funding issues in particular in their initial comments. On October 11, 1995, APCO filed *ex parte* comments to address the funding issues specifically. APCO's *ex parte* comments illustrate the variety of existing state funding methods associated with wireline 911 and E911. It noted that although some states took advantage of Federal matching funds to help pay for implementation of service, there is no national funding of wireline 911. APCO indicated that local and state governments have found ways to finance wireline 911 and argued these governments can be relied upon to do the same for upgrades required to achieve wireless E911 compatibility.¹⁶⁵ Several state and local government commenters noted that they have implemented legislation mandating statewide E911 services and authorizing a telephone tax to fund E911 systems.¹⁶⁶

87. The Consensus Agreement proposes essentially to rely on state and local funding mechanisms, which could be in the form of public appropriations or bond issues, with or without a separate 911 subscriber line fee. The Consensus Agreement parties, however, ask the Commission to declare that state or local 911 fees or taxes reasonably related to recovery of prudently-incurred wireless system or service costs are not barred as a matter of law.¹⁶⁷ They also ask the Commission to state that such fees or taxes should not discriminate between wireline and wireless carriers involved in delivery of 911 services. The parties agree to work in good faith toward the adoption of state and local

¹⁶² PCIA Comments at 28; RCA Comments at 9.

¹⁶³ RCA Comments at 8-9.

¹⁶⁴ APC Comments at 3-4 (urging the commission to consider mechanisms that would recover the costs of complying with any compatibility mandate in a competitively neutral manner through a system established at the Federal level); GTE Comments at 31-32 (arguing that the Commission must consider the cost of implementing wireless E911 prior to mandating the provision of these services).

¹⁶⁵ APCO letter, filed Oct. 11, 1995, at 1.

¹⁶⁶ See, e.g., Oregon Comments at 1-2; New Jersey Comments at 2-5; Lake County, Florida Ordinance 1994-16 (attached to Lake County Comments).

¹⁶⁷ Consensus Agreement at 3-4.

legislation fairly designed for cost recovery under these principles.¹⁶⁸

88. The comments on the Consensus Agreement take a variety of positions on this issue. The RCC supports the Consensus Agreement.¹⁶⁹ US West contends that the issue of funding is best left to the local public safety organizations and interested carriers, but that a uniform surcharge should be imposed on subscribers for both wireless and wireline E911.¹⁷⁰ GTE favors letting the states, but not local governments, define the funding requirements.¹⁷¹ Other commenters argue that “no federally mandated funding mechanism should be considered at this time, much less adopted, “because they believe that state and local government will address the 911 wireless funding issue appropriately and any federal rules could potentially disrupt current state and local 911 funding systems.”¹⁷² Noting that “the major” road block” to state and local government funding has been *some* cellular carriers,” TX-ACSEC contends that “adoption of the Consensus Agreement may provide those cellular carriers the incentive they need to stop undermining attempts to obtain funding for 911 wireless service at the state and local level.”¹⁷³ On the other hand, a number of parties contend that the Commission should be more involved in funding, either by mandating the method of cost recovery or by working with the states to develop an equitable funding mechanism.¹⁷⁴ Vanguard urges that existing funding sources should be used, and that implementation should be conditioned on funding by the state or locality.¹⁷⁵ AMSC contends that its subscribers should not be required to contribute to any state or local revenue pool if it is exempted from E911 requirements.¹⁷⁶ AT&T contends that wireless customers should pay only for operating costs of E911, and that the commission should require state and local governments to pay for equipment upgrades.¹⁷⁷

¹⁶⁸ *Id.* At 4.

¹⁶⁹ RCC (CA) Comments at 7.

¹⁷⁰ US West (CA) Comments at 5-6, 10-11.

¹⁷¹ GTE (CA) Comments at 8.

¹⁷² *See, e.g.* TX-ACSEC (CA) Reply Comments at 3-5; GTE Comments at 8; US West (CA) Comments at 10-11; Vanguard Comments at 4-5.

¹⁷³ TX-ACSEC (CA) Reply Comments at 4.

¹⁷⁴ BellSouth (CA) Comments at 7-8; PCIA (CA) Comments at 8; RCA (CA) Comments at 5-6.

¹⁷⁵ Vanguard (CA) Comments at 4-8.

¹⁷⁶ AMSC (CA) Comments at 9.

¹⁷⁷ AT&T (CA) Reply Comments at 4.

Ameritech urges that the funding mechanism be carrier and technology neutral.¹⁷⁸ ART argues that the financial burdens of implementing ALI systems should be shared by location services of all kinds.¹⁷⁹ In their reply comments, the signatories to the Consensus Agreement, Comcast, Vanguard, and Nextel argue that a public funding mechanism is required as a prerequisite to imposing obligations on CMRS carriers to provide E911.¹⁸⁰

b. Discussion

89. Although we have made implementation of E911 services contingent upon the adoption of a cost recovery mechanism, we will not prescribe a particular E911 cost recovery methodology at this time, for two reasons. First, the record does not demonstrate a need for such action. No party disputes the fundamental notion that carriers must be able to recover their costs of providing E911 services. Nor is there any evidence of state or local officials attempting to prevent a carrier from doing so. To the contrary, carriers and government officials uniformly recognize (1) that resolving cost recovery issues is a prerequisite to E911 deployment,¹⁸¹ unless a PSAP is capable of receiving the associated data elements. Moreover, we agree with APCO that local and state governments have pursued innovative and diverse means for the funding of wireline E911 services, and that it is reasonable to anticipate that these governments will follow a similar course with regard to wireless E911.

90. Second, an inflexible Federal prescription would deny carriers and government officials the freedom to develop innovative cost recovery solutions tailored to local conditions and needs. Such a prescription also might unintentionally discourage carriers from developing creative technological approaches to E911 deployment.¹⁸² Thus, Federal

¹⁷⁸ Ameritech (CA) Reply Comments at 3.

¹⁷⁹ ART (CA) Reply Comments 13-15.

¹⁸⁰ CTIA (CA) Reply Comments at 5; Comcast (CA) Reply Comments at 4-5; Vanguard (CA) Reply Comments at 4; Nextel Reply Comments at 3-4.

¹⁸¹ See, e.g., TX-ACSEC (CA) Reply Comments at 3-4; Oregon Comments at 1-2; New Jersey Comments at 2-5; Lake County, Florida Ordinance 1994-16 (attached to Lake County Comments); see also Consensus Agreement at 5.

¹⁸² See, e.g., SAT Comments at 5; ART Comments at 10-11; KSI Comments at 13-14.

action at this time actually might undercut and delay efforts to deploy wireless E911 capabilities. For these reasons, we will not prescribe a cost recovery methodology at this time. Furthermore, nothing in the record persuades us that, as a general matter, all state and local E911 cost recovery mechanisms are barred under the Communications Act. Furthermore, nothing in the record persuades us that, as a general matter, all state and local E911 cost recovery mechanisms are necessarily permissible, or necessarily barred, under the Communications Act. Whether a particular state or local tax or fee would constitute rate regulation under Section 332©, and therefore be preempted, would depend on the specifics of the tax or fee at issue.

4. Liability and Privacy Issues

a. Background and Pleadings

91. In the *Notice*, we sought comment on the necessity for, and implications of, imposing privacy requirements on information, such as name, address and telephone number, transmitted to LECs and PSAPs in the delivery of 911 emergency services. The *Notice* indicated that the Commission, in another proceeding regarding calling number identification services, declined to apply privacy protection requirements in circumstances which did not appear to raise serious privacy implication, including calls to emergency service providers. Recognizing that the states have adopted varying approaches to the privacy interests in information used in the delivery of emergency services, the *Notice* suggested that commenters address the issue of whether there are privacy interests in information transmitted by wireless service providers pursuant to the delivery of emergency services and, if so, what specific measures are appropriate to protect those interests.¹⁸³

92. Most commenters addressing this issue agreed with the Commission's general assessment that privacy protection requirements are not necessary in the delivery of 911 emergency calls.¹⁸⁴ Many commenters argued that a person calling 911 is generally assumed to give up a portion of their privacy rights at the time the call is initiated.¹⁸⁵ APCO, for example, contended that the act of dialing 911 is considered in most state and local jurisdictions to be implied consent to forward ALI information to the PSAP.¹⁸⁶ Other commenters, particularly the search and rescue (SAR) organizations, argued that privacy requirements must be waived for 911

¹⁸³ *Notice*, 9 FCC Rcd at 6180 (paras. 56-57).

¹⁸⁴ PCIA Comments at 26; BellSouth Comments at 19-20; Coast Guard Comments at 6-7.

¹⁸⁵ See, e.g., APCO Comments at 52; TX-ACSEC Comments at 12; Pertech Comments at 10.

¹⁸⁶ APCO Comments at 52; see also TX-ACSEC Comments at 12; Pertech Comments at 10.

solution for the emergency situations, and in view of recent developments and actual testing results, we find that there is no need to modify our decision at this time and we thus deny the portion of the Ameritech and TIA petitions that request revision of our ALI accuracy standards. Similarly, we find that Motorola's proposal to allow industry standards-setting groups to determine measurement and compliance procedures could cause unnecessary delay in deployment of the ALI features. To the extent that industry standards-setting groups develop solutions to ALI problems that would improve performance, we will consider appropriate changes to the wireless E911 rules.

F. Other Issues

1. Limitation of Liability

130. In the *E911 First Report and Order*, the Commission decided not to exempt providers of E911 service from liability for certain negligent acts by preempting state tort law.³³³ We found that the record did not support the arguments that a general exemption from liability is essential to achieving the goals of the Communications Act.³³⁴ In particular, we noted that displacing the jurisdiction of state courts over tort suits for negligence in installation, performance, provision, or maintenance of E911 systems is not necessary to the inauguration of E911 service.³³⁵ Because there was no evidence that specific state regulations are incompatible with national E911 goals, we determined not to preempt any state laws at this time and to examine the need for specific preemption in the future on a case-by-case basis.³³⁶

131. In response to concerns raised by some parties that the Wiretap Act³³⁷ could affect 911 operations or the legal liability of carriers, the Commission indicated in the Order that it had requested the Department of Justice to provide a legal opinion of the relationship between the Wiretap Act and the Commission's E911 rules.³³⁸ In a Public Notice issued December 10, 1996, the Commission announced that it had received a Department of Justice Memorandum Opinion

³³³ *E911 First Report and Order*, 11 FCC Red at 18727 (para. 99).

³³⁴ *Id.* at 18728 (para. 100).

³³⁵ *Id.*

³³⁶ *Id.* at 8730 (para. 105).

³³⁷ The Communications Assistance for Law Enforcement Act of 1994 ("CALEA," also referred to as "Wiretap Act"), among other things requires telecommunications carriers to ensure that their equipment is capable of permitting the Government (pursuant to a court order or other lawful authorization) to access certain "call-identifying information" that is reasonably available to the carrier. See Section 1002(a) of the Wiretap Act, 47 U.S.C. § 1002(a).

³³⁸ *E911 First Report and Order*, 11 FCC Red at 18727 (para. 988).

finding that the wireless E911 rules do not require persons subject to those rules to engage in any practices that might result in a violation of the Wiretap Act or other applicable provisions of law.³³⁹

132. Several petitioners seek reconsideration of our decision not to immunize wireless carriers from liability for 911 calls. These parties assert that the failure of the Commission to provide limited liability protection will be obstacle to E911 implementation, contending that, without Federal liability limitations, state tort actions could interfere with Federal priorities for a workable long-term E911 system and for rapid introduction of more competitive mobile services.³⁴⁰ In addition they claim that, if covered carriers are required to provide access to 911 for all callers, including those with whom they do not have any contractual relationship, they cannot contractually insulate themselves from liability when non-subscribers use their systems.³⁴¹ AT&T also request that the Commission make the Department of Justice's opinion available for review and comments.³⁴²

133. In its petition, Ameritech requests that the Commission provide covered carriers with a limitation of liability, or alternatively, establish Federal guidelines for liability limitations and encourage public safety planning groups to work with the states to adopt such limitations.³⁴³ In addition, Ameritech asserts that the Commission could make the 911 service deployment obligation contingent upon public safety organizations indemnifying carriers for negligence and other unintended errors, as suggested by US West's Comment on the Consensus Agreement in this proceeding.³⁴⁴ AT&T argues that wireline carriers by many states, asserting that the Commission's concern about displacing state authority in this context is misplaced.³⁴⁵ Alternatively, AT&T requests that the

³³⁹ Public Notice, "Memorandum Opinion Issued by Department of Justice Concludes that Commission's Recently Adopted Wireless Enhanced 911 Rules Are Consistent with Wiretap Act," DA 96-2067, released Dec. 10, 1996.

³⁴⁰ See, e.g., Omnipoint Petition at 6; AT&T petition at 8.

³⁴¹ SBMS Petition at 8-11; Omnipoint Petition at 6; BellSouth Petition at 9; AT&T petition at 7; Ameritech Petition at 11.

³⁴² AT&T Petition at 7-8.

³⁴³ Ameritech Petition at 14-15. Ameritech also argues that many states do not have specific laws limiting the liability of entities involved in the provision of 911 services. It notes that where states have adopted liability protection, it usually applies to the governmental or public safety employees, not to the telephone company, and if the telephone company is mentioned, it is likely that the law applies to wireline telephone companies and not to the wireless carriers. Ameritech Reply at 506, citing Fla. Stat. ch. 365.171(14)(1995).

³⁴⁴ Ameritech Petition at 14, citing US West Comments on Consensus Agreement at 10.

³⁴⁵ AT&T Petition at 7-8.

commission require states to treat wireless carriers the same as wireline carriers with respect to liability, contending that such parity is consistent with the statutory goal of according similar regulatory treatment to providers of functionally equivalent services.³⁴⁶

134. SBMS proposes that commission impose a liability limitation for providing 911 services and mandate that anyone using the carrier's network who does not have a contractual relationship with a carrier is subject to the carrier's standard terms and conditions.³⁴⁷ In addition, SBMS requests that the Commission determine that a carrier's inability to complete a call or provide the information required by this proceeding shall not be evidence of negligence.³⁴⁸ BellSouth also argues that the carriers cannot control the accuracy of information generated from non-service initialized handsets, and thus should not be liable for inaccurate information provided to PSAPs with regard to such handsets.³⁴⁹

135. On the other hand, Joint Commenters and TX-ACSEC oppose the petitions seeking reconsideration of our decision not to provide Federal protection from liability.³⁵⁰ They reason that, because existing state laws developed over the years for wireline 911 operations provide substantial protection against the privacy and ordinary negligence claims of most callers, and because state legislatures are to clarify that the same limitation of liability clause would apply to all service providers, it is not necessary for the Commission to preempt state tort law to achieve its goal at this time.³⁵¹ TX-ACSEC, for example, states that a Texas state district court has held that wireless carriers are covered by the same broad statutory limitation of liability protection as those afforded wireline carriers under Texas law.³⁵² In addition, Joint commenters argue that state tort laws on wireless carrier liability would be among those powers reserved to non-Federal authorities by Section 332(c)(3) of the Communications Act.³⁵³ They also object to Ameritech's and US West's suggestion that public safety organizations indemnify carriers.³⁵⁴

³⁴⁶ *Id.* at 7.

³⁴⁷ SBMS Petition at 8-11.

³⁴⁸ *Id.* at 11.

³⁴⁹ BellSouth Petition at 9.

³⁵⁰ Joint Commenters Opposition at 3; TX-ACSEC Opposition at 4-6.

³⁵¹ *Id.*

³⁵² TX-ACSEC Opposition at 4.

³⁵³ Joint Commenters Opposition at 3.

³⁵⁴ *Id.*; TX-ACSEC Opposition at 4-6.

136. In September 25, 1997 Joint Letter, the parties request that the Commission defer any decisions regarding carrier liability until the interested parties develop consensus positions.³⁵⁵ While supporting industry's commitment to continue negotiations with other interested parties, Congresswoman Eshoo urges the Commission not to delay resolution of issues under reconsideration.³⁵⁶ Parties filing further comments and reply comments generally support the proposal contained in the Joint Letter to defer any decision regarding the carrier liability issue.³⁵⁷ AT&T, however, contends that prompt resolution of the liability issue is critical.³⁵⁸ To the extent the Commission is concerned about preempting state tort law, AT&T proposes that the Commission "could issue a temporary default rule that would apply only where states have not resolved the issue."³⁵⁹ Nextel in its further comments also reiterates that the Commission should adopt a provision in this proceeding that would protect carriers from liability and that would preempt state laws to the extent they are inconsistent with the Commission's rules.³⁶⁰

137. None of the petitioners, however, presents arguments sufficient to persuade us to modify our determination that it is unnecessary to exempt providers of E911 service from liability for certain negligent acts and to preempt state tort law. As we noted in the *E911 First Report and Order*, states have particular interest in telecommunications and public safety matters, including operation of 911 emergency services.³⁶¹ Although the Commission may preempt state regulation when preemption is necessary to protect a valid Federal regulatory objective,³⁶² we believe it is premature and speculative for the Commission to establish a national standard of liability protection in order to achieve rapid deployment of wireless E911 systems. As the Commission determined in the Order, "displacing the jurisdiction of state courts over tort suits for negligence in installation, performance, provision, or maintenance of E911 systems is not

³⁵⁵ Joint Letter at 4.

³⁵⁶ Eshoo *Ex Parte* Letter (Sept. 29, 1997).

³⁵⁷ See, e.g., AirTouch Further Comments at 1-2; BellSouth Further Comments at 3; CTIA Further Comments at 6-7; Joint Reply Comments at 1.

³⁵⁸ AT&T Further Comment at 3.

³⁵⁹ *Id.*

³⁶⁰ Nextel Further Comments at 9.

³⁶¹ *E911 First Report and Order*, 11 FCC Red at 18727 (para. 99).

³⁶² *E911 Notice*, 9 FCC Red at 6181 (para. 59); *E911 First Report and Order*, 11 FCC Red at 18729 (para. 104), citing *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355 (1986); *Illinois Bell Tel. Co. v. FCC*, 833 F.2d 104 (D.C. Cir. 1989); *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *Texas Public Utility Comm'n v. FCC*, 886 F.2d 1325 (D.C. Cir. 1989); *North Carolina Utilities Comm'n v. FCC*, 522 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977).

necessary to the inauguration of E911 service.”³⁶³ Petitioners fail to persuade us that our decision to examine the need for specific preemption in the future on a case-by-case basis was wrong.

138. Petitioners’ claims that the limitation of liability is necessary are not convincing, particularly considering the fact that major carriers are already transmitting all 911 calls and no evidence of liability problems is presented in the record of our reconsideration proceeding. Contrary to petitioners’ speculative claim that current state laws are not “likely” to provide wireless carriers with adequate protection against liability, the record indicates that state legislative bodies and state courts are developing their own solutions to liability issues.³⁶⁴ While we recognize that not all states currently provide specific statutory limitation of liability protection for wireless carriers, we believe that state courts and state legislatures are the proper forums in which to raise this issue, not the Commission.³⁶⁵ For similar reasons, we deny AT&T’s proposal that the Commission should ensure that wireless carriers are subject to the same “gross and wanton negligence” standard applied to wireline carriers by many states.³⁶⁶ In addition, as TX-ACSEC’s opposition proves, certain states are trying to revise their tort laws to provide the same limitation of liability to both wireline and wireless services.³⁶⁷

139. We also disagree with AT&T that a single uniform national standard of liability is required to achieve the goals of the Communications Act and that the Commission should preempt state tort law under Section 332 © of the Act.³⁶⁸ While we recognize covered carriers’ concern over potential exposure to liability in the provision of 911 services, we do not believe that the lack of a single national standard of liability in the provision of 911 services, we do not believe that the lack of a single national standard of liability should cause delay in implementation of effective wireless 911 services. Wireless carriers already

³⁶³ *E911 First Report and Order*, 11 FCC Red at 18728 (para. 100).

³⁶⁴ For example, the Alaska statute states that except for intentional acts of misconduct or gross negligence, a service supplier, local exchange telephone company, or mobile telephone company, including a cellular service company, and their employees and agents, are immune from tort liability that might be incurred in the course of installing, training, maintaining, or providing enhanced 911 systems or transmitting or receiving calls on the system. Alaska Stat. § 29.35.133; *see also* XYPOINT *Ex Parte* Filing, “Master Chart of State E911 Laws: (Mar. 27, 1997).

³⁶⁵ Based on XYPOINT’s survey of state 911 legislation, Ameritech and Omnipoint argue that many states will do not have specific laws limiting the liability of entities involved in the provision of 911 services. *See* Ameritech Reply at 6; Omnipoint Reply at 3-4.

³⁶⁶ AT&T Reply at 7.

³⁶⁷ TX-ACSEC Opposition at 4-6.

³⁶⁸ AT&T Petition at 8.

transmit 911 calls without Federal preemption of state liability laws. Moreover, we do not believe that state tort laws dealing with 911 services should be considered as prohibited "rate and entry regulation of CMRS" under Section 332©, at least without case-by-case evaluation. We find meritless AT&T's argument that the absence of protection against liability could have an unintended consequence of discouraging E911 deployment where PSAPs decline to hold carriers harmless, because covered carriers must deploy E911 services pursuant to our rules regardless of indemnification by the PSAPs.

140. As an alternative to a Federally mandated limitation of liability, petitioners also argue that the Commission should "require" states to treat wireless carriers the same as wireline carriers with respect to liability or "encourage" the public safety community to work with states to develop the necessary framework for indemnification agreements.³⁶⁹ Although we encourage the public safety community, wireless carriers, as well as state governments, to continue their efforts to develop mutually acceptable indemnification agreements, we affirm our prior decision that it is premature or unnecessary to preempt state laws at this time. We recognize, however, petitioners' claim that they cannot contractually insulate themselves from liability when non-subscribers use their systems.³⁷⁰ Because covered carriers are required to transmit 911 calls from all handsets regardless of subscription, we agree with SBMS that it would appear reasonable for a carrier to attempt to make the use of its network by a non-subscriber subject to the carrier's terms and conditions for liability.³⁷¹ We do not, however, seek to preempt any applicable state laws.

141. We also do not adopt AT&T's proposal that we establish a temporary default rule that would apply only where states have not resolved the issue.³⁷² This proposal was introduced very late in this proceeding in response to the wireless Telecommunications Bureau's October 3 party appears to have responded to this proposal. Despite AT&T's suggestion that its proposal standard would in fact operate to preempt state law. If a default is to have any effect, it presumably must at least preclude state courts from applying state common law or precedent to wireless 911 liability issues. We find no adequate basis for imposing this sort of preemption upon the states.

³⁶⁹ See AT&T Reply at 8; Ameritech Reply at 7.

³⁷⁰ SBMS Petition at 8-11; Omnipoint petition at 6; BellSouth Petition at 9; AT&T Petition at 7; Ameritech Petition at 11.

³⁷¹ SBMS petition at 8-11.

³⁷² AT&T Further Comments at 3.

142. With regard to AT&T's request that the Department of Justice's opinion regarding the application of the Wiretap Act be made available for review and comment, we do not believe it is necessary to seek comment. AT&T expresses its concern about carrier liability for resolution of issues in this and other proceedings in the public interest, we will not delay decisions on the current record in the hope that this will happen.

APPENDIX E

TECHNICAL COMPONENTS FOR E911 SERVICE

<i>Technical Component</i>	<i>Explanation of the Technical Component</i>
Dedicated 911 Trunks	<p>A telephone circuit used for a single purpose of transporting 911 calls. In the current E911 network, there are dedicated trunks from the wireline company's central office to the selective router and from the selective router to the PSAPs.</p> <p>For Phase I and Phase II service, there are dedicated trunks from the mobile switching center (MSC) to the selective router.</p>
Selective Routing	<p>The routing of a 911 call to the proper PSAP based upon the location of the caller. Selective routing is controlled by the Emergency Service Number (ESN). The ESN is derived from the customer location. An ESN is used to identify the unique combination of public safety agencies which respond to a given area. The ESN is associated with addresses for the purpose of routing 911 calls to the appropriate PSAP.</p>
E911 Database for ANI/ALI	<p>This is a database which houses the automatic number identification (ANI) and automatic location identification (ALI) records of telephone subscribers. Automatic number identification is the telephone number of the 911 caller. Automatic location identification includes the customer's name, address, telephone number and emergency response information. The telephone company maintains the E911 database.</p>
Database Administration	<p>A system of manual procedures and computer programs used to create, store, and update the data required to provide selective routing and/or Automatic Location Identification (ALI) for 911 systems.</p>
Data Circuits to Existing 911 Database	<p>Circuits which connect a wireless company 911 database to the existing ANI/ALI database.</p>
PSAP Controller	<p>A stand-alone customer premise equipment which provides ANI decoding and function key control for 911 service.</p>
ALI Modem	<p>An interface device which allows digital data signals to be transmitted over analog telephone lines.</p>
Telephone System	<p>Customer premise equipment which is connected to the public switched network for the receiving and sending of telephone calls. The system includes the telephone answering sets and the common equipment needed for the functioning of the system.</p>

Technical Components For E911 Service

<i>Technical Component</i>	<i>Explanation of the Technical Component</i>
ANI/ALI Display	A screen on which the ANI/ALI of 911 callers is displayed at the call taker position at the PSAP. This unit also contains 911 transfer buttons which are used to transfer 911 calls to other agencies. This unit is connected to and receives the information from the PSAP Controller, and may be integrated with the ANI display.
Computer Aided Dispatch (CAD)	A computer based system which aids PSAP attendants by automating selected dispatching and record keeping activities.
Administration	<p>For the wireline and wireless telecommunication companies, this includes the monthly maintenance of the PSAPs and other technical staff and legal costs directly related to E911 service. Monthly maintenance of the PSAPs includes the E911 portion of the company's National Operating Center (NOC) which monitors the network 24 hours a day, seven days a week. For wireless E911, the PSAP monthly maintenance also includes cell site changes and additions to the database.</p> <p>For PSAPs, this includes the PSAP costs to work with the wireline and wireless companies to maintain databases and maps.</p>
ALI Steering	ALI Steering is a mechanism which interfaces with computer software to allow a query to multiple databases to obtain ALI database records.
Software Features at MSC	Additional software which must be added at the wireless Mobile Switching Centers (MSC) for the processing of 911 calls.
Routing Translation (Wireless)	A database that resides in the MSC that translates 911 digits to the appropriate tandem switch to route the call to the PSAP that services the area from which the 911 is received.
Data Links to Private Vendor (SS7 or other signaling)¹	Data circuits from a third party wireless database provider to the ANI/ALI database.

¹ An American National Standards Institute (ANSI) data transmission standard that specifies how data messages are packaged and then transported from one point to another across a grid of links and circuits. SS7 is a network protocol for high-speed digital transmission of data messages tailored for telephone switching. An out-of-band common channel signaling network, used by telecommunications carriers to set up calls and provide services.

Technical Components For E911 Service

<i>Technical Component</i>	<i>Explanation of the Technical Component</i>
Service Control Point (SCP)	A switch used in a SS7 network to direct digital information. Within the 911 system, the SCP controls the direction of the 911 call to the appropriate 911 selective router.
Relational PSAP Database	A relational PSAP database contains the PSAP boundary maps and emergency service boundaries plotted in latitude and longitude coordinates rather than address ranges.
Mapping	Mapping is a technical component for Phase I and Phase II. Mapping for Phase I is needed for the wireless cell sector layout. Mapping for Phase II is a function to correct existing maps for latitude and longitude, and the display of the maps at each call taker position at the PSAP.
Location Determination Technology (LDT)	A system which computes the X and Y coordinates to determine location.
Voice band modem for Global Positioning System (GPS)	An interface device which allows digital data signals to be transmitted over analog telephone lines.
GPS enabled handset	A wireless phone that is capable of receiving GPS data from satellites orbiting the earth.
Position Determining Equipment	Equipment which is used to determine the location of wireless callers based on latitude, longitude, and in some cases, altitude.
TDOA Location Processor Equipment	A powerful digital signal-processing array designed for high-volume location processing. It selectively determines which telephones to locate, based upon any number of criteria such as 9-1-1.